

FILED

MARCH 16, 2009

KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

BENNIE RAY JOHNSON,	§	
A.K.A. BENNIE JOHNSON,	§	
TDCJ-CID # 819383,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:07-CV-0003
	§	
RISSIE OWENS, Parole Chairperson,	§	
Board of Pardons and Parole,	§	
	§	
Defendant.	§	

ORDER OF DISMISSAL

Plaintiff BENNIE RAY JOHNSON, also known as BENNIE JOHNSON, while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-referenced defendant and was granted permission to proceed *in forma pauperis*.

On February 23, 2009, a Report and Recommendation was issued by the United States Magistrate Judge analyzing defendants' May 28, 2008 motion to dismiss and plaintiff's July 7, 2008 response. The Magistrate Judge recommended defendants' motion to dismiss be granted and the instant cause be dismissed with prejudice as frivolous; alternatively that it be dismissed without prejudice as barred by Eleventh Amendment immunity; and alternatively that it be dismissed as moot.

Plaintiff filed his objections on March 12, 2008.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the Objections filed by the plaintiff.

The Court is of the opinion that the objections of the plaintiff should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that the instant cause is DISMISSED WITH PREJUDICE AS FRIVOLOUS; ALTERNATIVELY THAT IT BE DISMISSED WITHOUT PREJUDICE AS BARRED BY ELEVENTH AMENDMENT IMMUNITY; AND ALTERNATIVELY THAT IT BE DISMISSED AS MOOT.

LET JUDGMENT BE ENTERED ACCORDINGLY.

All pending motions are DENIED.

The Clerk will mail a copy of this Order to the plaintiff, and to any attorney of record by first class mail. The Clerk will also mail a copy to TDCJ-Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, TX 78711 and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

IT IS SO ORDERED.

ENTERED this 16th day of March, 2009.

/s/ Mary Lou Robinson
MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE